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We are responding to your letter dated April 15, 2015 regarding Workers? Voice?s (?the Committee?s?) 2014 Amended 30-Day

Post-General Report (?Post-General Report?).

We first address certain payments made to New Partners Consulting, Inc. (?New Partners?) that you list in your letter as either costs that the Committee failed to disclose in a 24-Hour Report or that the Committee failed to itemize on its Post-General Report after reporting on a 24-Hour Report. These costs relate to digital advertisements the Committee engaged New Partners to design and place. As we will explain in greater detail below, the vast majority of these costs should not have been reported by the Committee as independent expenditures, as the ads did not contain express advocacy;

reports that were not required cannot be filed late. Additionally, due to the unique nature of digital advertising, the Committee was dependent on its vendor to timely provide cost information, and information about the independent expenditure advertisements was not provided in time to timely disclose them.

Your letter identifies payments made to New Partners on October 28, 29, 30, and 31 for ads concerning candidate Mitch McConnell that the Committee disclosed in its Post-General Report but did not disclose on a 24-Hour Report. The costs for these four days of ads total \$14,949.52. These costs were for a series of five digital ads addressing Senator McConnell?s connection to various issues and special interests. Upon review, these ads did not constitute independent expenditures, since they did not contain express advocacy against Senator McConnell as a candidate for reelection. The Committee inadvertently reported these online ads as independent expenditures in its Post-General Report. We will amend that Report accordingly. For this reason no 24-Hour Reports were due and no further action should be taken by the Commission regarding these payments.

Your letter also identifies two payments to New Partners for ads concerning candidate Mark Begich that the Committee respectively disclosed on an October 25 and October 30 24-Hour Report that were not itemized on Schedule E of the Post-General Report. These payments total \$,4393.75. These ads were inadvertently reported as independent expenditures. In fact, these were get-out-the-vote advertisements that encouraged voters to use Alaska?s online voting option and did not refer to any candidate. Prior to filing the Post-General Report, these ads were reviewed and the Committee realized that they were not independent expenditures, so they were not itemized on the Post-General Report. The Committee is ready to amend the 24-Hour Reports to remove these two reported payments, if requested to do so. But the Commission should take no further action otherwise regarding these payments.

Lastly on digital ads, your letter lists payments to New Partners for ads in support of Begich during October 25-31. These payments total \$571.39. To understand why the Committee did not timely report these costs on 24-Hour Reports, it is important to understand how costs are calculated for digital ads.

The cost calculation for these digital ads ? critical to assembling and timely filing an independent expenditure report ? differs markedly from broadcast ads. The cost of broadcast ads is known at the time an ad buy is made, making it predictable and easy to report in short time frames. The digital ad costs here (which are typical of digital ads overall) did not work the same way. Digital ads run 24 hours a day, and the costs of those ads accrue as they are clicked on by viewers. The cost per click constantly fluctuates, and is determined by an on-going auction/bid process. It is therefore impossible to know a digital ad?s cost for a day until after that day has ended.

The Committee contracted with New Partners to help develop and place digital ads. The vendor agreed to supply the Committee with the daily cost

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amounts for these ads, and the Committee was reliant on the vendor to supply this data as it had no independent access to the information. Unfortunately, the vendor untimely provided the Committee with the costs for the ads listed in your letter. The Committee reported these amounts promptly after the information was available. As these amounts are relatively low, and as the Committee's pre-election reports had already made the public aware of its support for Begich, we ask that no further action be taken on this matter.

Your letter further lists a number of payments to Mosaic as payments that should have been reported on a 24-Hour Report. One of these payments, \$270 listed as disseminated on October 19 in support of Joe Garcia, in fact was timely reported. The distribution date for this entry was October 16, and it was reported on a 24-Hour Report on October 17.

Unfortunately, due to a vendor reporting system flaw, the Schedule E entries for "Date of Public Distribution/Dissemination" and "Date of Disbursement or Obligation" were reversed, which resulted in an entry that appeared to be late but in fact was not. The Committee will amend the 24-Hour Report accordingly if requested to do so, but we respectfully submit that this explanation should suffice.

The remaining Mosaic payments listed in your letter (\$270 for Garcia on October 19; \$270 for McConnell on October 13; \$270 for Alison Lundergan Grimes on October 13; \$48 for Grimes on October 27; and \$1,500 for Grimes on October 27) relate to flier production costs. These late-reported entries were due to Mosaic untimely invoicing the Committee for several fliers that Mosaic produced for the Committee. Mosaic caught this oversight and contacted the Committee a few days before the Post-General Report was due. The Committee, of course, did include them in its Post-General Report. The late receipt of these flier costs also affected two additional entries in your letter - one for Mack-Sumner Communications on October 31 and another for Florida AFL-CIO General Fund on November 2. Both independent expenditures

supported candidate Joe Garcia. Had the costs been timely received by the Committee, the Committee's expenditures in this election would have surpassed the \$1,000 threshold for a 24-Hour Report, and the Committee would have properly and timely reported these costs. However, since the Committee was not timely invoiced for the Garcia fliers, the Committee did not know that the \$1,000 threshold had been reached and that it was obligated to file 24-Hour Reports.

Like the late reported digital ads, the amounts above are relatively modest. Additionally, a number of these expenditures pertain to vendors as to which many other substantial Committee expenditures were timely reported, and their omission from 24-Hour Reports did not result in any significant lack of notice to the public as to which candidates the Committee was supporting or opposing, and to what financial degree. Accordingly, the Commission should take no further action regarding these payments.

Your letter lists a number of entries for payees AFSCME Florida Special Account and AFSCME for Michigan. All of the independent expenditures to these payees were "in-kind independent expenditures" that the Committee reported under an interpretation of 11 C.F.R. § 104.13(a)(12), which provides: "Except for items noted in 11 CFR 104.13(b)?"

"[c]ontributions of stocks, bonds, art objects and other similar items to be liquidated?" "each in-kind contribution shall also be reported as an expenditure at the same usual or normal value and reported on the appropriate expenditure schedule, in accordance with 11 CFR 104.3(b).?" This regulation, then, requires an offsetting disbursement entry on Form 3X for every in-kind contribution that a committee receives during the same reporting period. However, the Committee's application of this regulation did not reflect that the Federal Election

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Commission (?Commission?) has long maintained an interpretative rule that requires all in-kind expenditures to be reported as a Line 21(b) operating expenditure. That interpretative rule exists in several official Commission publications. The first is its Campaign Guide for Nonconnected Committees (2008). The Federal Election Campaign Act (?the Act?) states that the Commission shall ?prepare, publish, and furnish to all persons required to file reports and statements under this Act a manual recommending uniform methods of bookkeeping and reporting.? 52 U.S.C. ? 30111(a)(2). The Commission identifies its Campaign Guides as ?compliance manuals for committees registered with the FEC.? <http://www.fec.gov/info/publications.shtml> (emphasis added). And, the guide for nonconnected committees like the Committee instructs:

[T]he value of the in-kind contribution [received] must be reported as an operating expenditure on Line 21(b) (in order to avoid inflating the cash-on-hand amount). 104.13(a)(2). If the in-kind contribution must be itemized on Schedule A, then it must also be itemized as an operating expenditure on Schedule B for operating expenditures. See the illustration at right.

Id. at 58 (footnote omitted). The Campaign Guide for Corporations and Labor Organizations, at p. 55, contain nearly identical instructional language, including the citation to ? 104.13(a)(2).

The second kind of publication that establishes this interpretative rule is the instructions for Form 3X itself. The Act directs the Commission to ?prescribe rules, regulations, and forms to carry out the provisions of this Act.? 52 U.S.C. ? 30111(a)(7) (emphasis added). The Form 3X instructions direct: ?Each contribution in-kind must also be reported in the same manner as an operating expense on Schedule B and included in the total for ?Operating Expenditures.?? Instructions for Form 3X and Related Schedules, p. 10 (emphasis added); see also id. at 13 (?Contributions in-kind received by the committee which are itemized on Schedule A must also be itemized as an operating expenditure on Schedule B.?) (emphases added).

This, then, is an interpretative rule that binds the Commission unless and until the Commission changes it. That the Committee did not actually rely upon the Commission's interpretative rule when it reported its in-kind expenditures in the Post-General Report does not matter; the Commission cannot enforce compliance with a reporting standard that did not then, and still does not, exist. The Committee stands ready to amend its Post-General Report to list on Line 21(b) rather than Schedule E all of its in-kind expenditure transactions with the above-referenced payees. Of course, the 24-hour reporting requirement did not apply to Line 21(b), so at most the Committee reported its in-kind expenditures on the wrong reporting schedule of its Post-General Report.

Even if for some reason the Commission's interpretative rule were invalid ? and there is no reason why it would be ? and for some further reason these in-kind expenditures were required to be reported on Schedule E within 24 hours of the dissemination of the particular communication, still no further action should be taken on these expenditures, for two reasons. First, they are extremely small amounts, totaling a mere \$393.33 for 16 expenditures. Additionally, the Committee relied heavily upon in-kind contributions of third-party-paid personnel in order to carry out its activities, and those kinds of in-kind contributions account for all or virtually all of the amounts that the Committee correspondingly reported as in-kind expenditures to the payees above. The Committee established an elaborate accounting system in order to timely record the nature, timing and value of these contributions and their use in its activities. Nonetheless, some of this information was not received by the Committee from its in-kind contributors or otherwise in time

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for the Committee to report it on a 24-Hour Report.

Your letter also lists one expenditure to payee AFL-CIO on October 22 for \$71.78 that was self-evidently timely reported on a 24-Hour Report filed on October 23. We request that you clarify what facts and analysis led to this expenditure appearing in your letter. In order that we may have a fair opportunity to address any such facts or analysis, we request that you provide any clarification to us before any further action is taken.

Lastly, the remaining expenditures in your letter relate to vendors Wildfire Contact, LLC (\$37,537.64 and \$63,792.00) and Bynum Thompson Ryer (\$50,000.00). These expenditures were for telephone calls in support of candidate Bruce Braley.

The Committee made the decision to pay for these calls just before the general election date, the Committee's busiest time of the election cycle. Due to an unfortunate internal miscommunication between the Committee's political and compliance staff, this decision and the pertinent invoices for these expenditures were not timely communicated to the Committee's compliance staff, resulting in late reporting, as we acknowledge. This oversight was inadvertent and unintentional; it was not done purposely, knowingly, or with any intent to avoid the Committee's reporting obligations. In light of the above, we respectfully submit that no further action should be taken with respect to any of these matters.
